

## DOE EM CLEANUP AND COMPLIANCE AGREEMENT FACT SHEET

### SUMMARY

Data Element	Data
Site	Nevada Test Site
Agreement Name	Nevada Federal Facility Agreement and Consent Order (FFACO)
State	Nevada
Agreement Type	Federal Facility Agreement and Consent Order
Legal Driver(s)	FFCAct
Scope Summary	Identify sites of potential historic contamination and implement proposed corrective actions
Parties	DOE; Department of Defense (DoD); Nevada Division of Environmental Protection (NDEP)
Date	5/10/1996

### SCOPE

- Identify sites of potential historic contamination and implement proposed corrective actions.
- Establish specific sampling and monitoring requirements, including drilling and subsurface sampling.

### ESTABLISHING MILESTONES

- Within sixty (60) calendar days following the signing of this Agreement, the parties shall meet to review Appendices II-IV and concur on the classification of all presently identified CAUs to insure all known CAUs are placed in the appropriate appendix, and where appropriate, due dates and deadlines established for existing and proposed activities.
- Following the transfer of a CAU from Appendix II, Corrective Action Sites/Units, to Appendix III, Corrective Action Investigations/Corrective Actions milestones,

associated due dates and deadlines may be proposed by DOE and/or DoD but shall be established by NDEP.

- Deadlines may be established for the submittal of work plans, CADDs, CAPs, and completion of corrective actions within the FY+2 planning window. For those work plans, CADDs, CAPs, and corrective actions for which completion may fall outside the planning window (FY+2), interim deadlines may be established within the FY+2 planning window.
- One (1) milestone, with an associated due date or deadline, beyond FY+2 will be established for the completion of UGTA. In addition, at any one time, one (1) other milestone, with an associated due date or deadline, besides the completion milestone can be established for UGTA beyond the FY+2 window. Once this other milestone moves into the FY+2 window, an additional milestone beyond FY+2 can be established such that two outyear milestones (one of which is the completion milestone) can always exist for UGTA.
- DOE and DoD shall on or before the 30<sup>th</sup> calendar day following the end of each quarter, submit a progress report to NDEP, which shall serve as a partial basis for the discussions at the quarterly meetings.
- DOE and DoD shall include in their quarterly reports a three-month advance schedule outlining field activities proposed to be implemented under this Agreement. A more detailed schedule shall be provided to NDEP on a bi-weekly basis, and shall provide the specific dates for the subsequent two-week period.
- NDEP shall grant a reasonable extension of a deadline upon receipt of a timely written request from DOE and/or DoD and when good cause (to be determined by NDEP) exists. Force Majeure shall constitute good cause to extend a deadline.
- This Agreement shall not be modified unless such modification is in writing and signed by all affected parties.

## **FUNDING**

- DOE and DoD shall take all necessary steps to obtain timely funding through consultation with the parties and the submission of timely budget requests.
- DOE and DoD shall make the scope of work and the budgets to be used in implementing the terms of this Agreement available to NDEP.
- Prior to the annual submission of DOE/NV's FY+2 budget request to Headquarters,

DOE shall give to NDEP briefings on the proposed budget requests, and the opportunity to review, comment, and make recommendations on the priorities and budget request.

- DOE and DoD will provide to NDEP appropriate sections of the President's Budget Request to Congress, and shall notify NDEP of any differences between the proposed budget and the actual requests.
- In the event that the U.S. Congress has failed to appropriate requested funds, DOE and/or DoD shall transmit to NDEP for its review a proposed alternate schedule and level of activities to satisfy the terms and conditions of this Agreement.
- DOE and/or DoD shall, within 60 days of NDEP's request, provide NDEP with budgets and costs for activities covered by this Agreement.
- DOE and DoD assert that their ability to meet obligations is subject to the Anti-Deficiency Act. NDEP does not recognize that the Anti-Deficiency Act constitutes a Force Majeure or constitutes a defense or an excuse for failure to comply with this Agreement.

## **PENALTIES**

- NDEP reserves the right to bring any enforcement action against DOE and/or DoD for noncompliance with the terms and conditions of this Agreement.
- In the event that DOE or DoD fails to meet an established deadline, NDEP may assess a stipulated penalty in the amount of \$5,000 per week for the first week or part thereof, \$10,000 per week for the following week or part thereof, and \$15,000 per week for the third week and each succeeding week for which the failure to meet and established deadline occurs.
- Disputes shall be resolved according to Part IX, Informal Dispute Resolution and Appeal Procedure. A hearing before the Nevada State Environmental Commission (SEC) shall determine the ultimate outcome of the appeal. Any party may appeal the final decision of the SEC.
- Stipulated penalties will continue to accrue and may be assessed at NDEP's discretion during pursuit of the Informal Dispute Resolution and Appeal Procedure.